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Security Council

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Letter dated 29 July 2002 from the Secretary-General addressed to the President of the Security Council

In accordance with article 4, paragraph 13, of the Peace Agreement of 12 December 2000, the Eritrea-Ethiopia Boundary Commission has transmitted to the Secretaries-General of the Organization of African Unity and the United nations two Orders to the Parties for publication. The Orders and the transmittal letter, dated 19 July 2002, are annexed to the present letter.

I should be grateful if you could bring these orders to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

02-50325 (E) 010802

Annex

Letter dated 19 July 2002 from the Registrar of the Boundary Commission to the Secretary-General

Article 4, paragraph 13 of the Agreement of 12 December 2000 between the Democratic Republic of Ethiopia and the State of Eritrea provides as follows:

> "Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries-General of the OAU and the United Nations for publication ...".

In the spirit of the language of the 12 December 2000 Agreement, the President of the Boundary Commission has requested me to transmit to you and the Secretary-General of the Organization of African Unity the attached text of the Commission's Orders to the Parties of 17 and 18 July 2002.

(*Signed*) Bette E. **Shifman**
Registrar of the Boundary Commission

Enclosure 1

ERITREA - ETHIOPIA BOUNDARY COMMISSION

ORDER OF THE COMMISSION

(MADE PURSUANT TO ARTICLE 20 AND ARTICLE 27(1) OF THE COMMISSION'S RULES OF PROCEDURE)

WHEREAS,

1. By a letter dated 7 June 2002 Eritrea requested "that the Commission adopt an interim order instructing Ethiopia that it must immediately cease the settlement of its nationals into territory that has been determined by the 13 April 2002 Decision to fall within Eritrean sovereignty".

2. The locations within which Eritrea asserted that Ethiopia was settling its nationals not indigenous to the region were described by Eritrea as "the Badme area of Eritrea". An attached excerpt from a Tigrayan news broadcast referred to settlements "in Hadish Adi and Dembe Gedamu, villages around Badme" and to a welcome accorded to the settlers by "the people of Badme and its environs".

3. On 14 June 2002 Ethiopia filed a Response to Eritrea's letter of 7 June 2002. The Ethiopian Response referred to "resettlement activities in the Badme region". The Response also stated [*footnote omitted*]:

> "The radio translation to which Eritrea refers says that Ethiopia is settling people in the environs of Badme and specifically in two villages, Dembe Gedamu and Hadish Adi. As indicated by the label "BADME" on the map at attachments 2 and 3 of Eritrea's letter, Badme is shown as a kebele as well as a town, and the map shows the kebele of Badme as lying on both sides of the delimitation line as depicted on the map, and, thus, the settlement of people in the environs of Badme is unremarkable.
> The specific villages in which people were settled according to the radio transcript provided by Eritrea are Dembe Gedamu and Hadish Adi. The label for Dembe Gedamu depicted on the map at attachments 2 and 3 of Eritrea's letter refers to the former kebele of Dembe Gedamu, which the map shows as being on both sides of the Commission's lines depicted on the map. Conspicuously absent from Eritrea's letter is a map depicting the location of Hadish Adi. However, Eritrea did provide a map depicting the location of Hadish Adi in her judges' folders during oral argument in December, 2001. This map, which is attached at Attachment C, shows unmistakably that the village of Hadish Adi is to the east of Eritrea's claim line, lying in territory that was never in dispute. Thus, there is no basis for Eritrea's allegation that Ethiopia has been settling people in areas awarded to Eritrea in the Commission's Decision, let alone that such settlement is a scheme to affect the demarcation."

Two attachments to the Ethiopian Response referred respectively to the "Badme Sub-District" of the North Western Zone, "the disputed border area near Badme" and "the Badme sub-region". The Response further referred to Dembe Gedamu as "the former kebele of Dembe Gedamu" lying on both sides of the line delimited on 13 April 2002, and to Hadish Adi as being a village east of Eritrea's claim line.

4. On 24 June 2002 Eritrea filed a Memorandum in support of its Request in which it observed that there are several places with the name of Hadish Adi in the locality in question and stated that Eritrea cannot identify with certainty the one to which the Ethiopian radio broadcast alludes.

5. On 1 July 2002 Ethiopia filed a "Further Response to Eritrea's Request for Interim Measures", in which reference is made to a place called "Dembe Bengul".

6. Both Parties have filed copies of maps said by them to be supportive of their respective positions.

7. Eritrea has invoked Article 20 of the Commission's Rules of Procedure as justifying the issue by the Commission of an interim protective order. Ethiopia has denied the applicability of this Article.

8. In its Interlocutory Order of 7 July 2002, the Commission recalled that Article 27, paragraph 1, of the Rules of Procedure provided that "the Commission shall be entitled to make any necessary interim, interlocutory or partial decisions".

9. On its first consideration of the matter, the Commission took the view that it could not, at this stage, reach any final conclusions on the Eritrean request of 7 June 2002 without further information as to the exact location of the settlements to which that Request related.

10. Accordingly, the Commission decided in its Interlocutory Order of 7 July 2002 to send a team ("the Team") to determine by examination on the ground and from the air the exact location of the various places mentioned in the exchanges between the Parties and referred to in the recitals

to that Order and, so far as possible, the extent to which there had been movements of population in or around them since 13 April 2002. These places were:

- Badme and its environs (including "Badme sub-region" or kebele of Badme);
- Dembe Gedamu (including the kebele of Dembe Gedamu);
- Hadish Adi; and
- Dembe Bengul.

11. The Team, after visiting the places in question on 12 and 13 July 2002, submitted a report of its findings to the Commission on 15 July 2002 and the Commission immediately communicated these findings to the Parties.

12. The Team's findings included the following:

- As to Badme, there was no observable sign of recent population settlement or evidence of makeshift housing such as tents.

- As to Dembe Gedamu, there was no evidence of civilian settlement at the village of that name, which appeared to be abandoned. However, on maps submitted by both Parties, "Dembe Gedamu" appears as the name of an area as well, within which the Team did find evidence of a recent tent settlement housing some 90 persons, at a place called "Dembe Mengul", Dembe Mengul is located 0.4 km to the west of the delimitation line established by the Commission's Decision of 13 April 2002. The one inhabitant whom the Team was able to interview claimed to be a displaced person who had recently returned to his home there. He stated that he had received assistance from the Government in the form of tents, seeds and money. Aerial photography established that this location was settled after 13 April 2002.

- As to Hadish Adi, there is evidence of a recent settlement consisting of fresh tents which appear to house some 100 persons. Hadish Adi is 3.5 km to the east of the delimitation line established by the Commission's Decision of 13 April 2002.

- As to Dembe Bengul, the Team was unable to identify a place of that name at the location indicated on the maps submitted by the Parties.

13. At a hearing held in The Hague on 16 July 2002, the Parties addressed the findings of the Team and presented oral arguments on the questions raised by Eritrea's Request of 7 June 2002.

14. During the hearing on 16 July 2002, the Parties did not contradict the findings of the Team.

15. At the end of the oral hearings, the Parties made the following final submissions:

For Eritrea —

"1) that Ethiopia cease its illegal program of transfer of Ethiopian civilians into Eritrean territory and otherwise bring its conduct into compliance with the delimitation Decision of 13 April 2002;

2) that all land grants purported to have been made by Ethiopia throughout its military occupation of Eritrean territory are declared void and of no effect; and

3) that Ethiopia immediately remove all Ethiopian settlers installed in Eritrean territory since the announcement of the 13 April delimitation Decision".

For Ethiopia —

"that the Commission should reject Eritrea's request for interim measures."

16. The Commission finds that there is no evidence of new settlement in Badme and Dembe Gedamu. There is evidence of new settlers at Hadish Adi, but that location is within Ethiopia. The only location in Eritrean territory at which there is evidence of new settlement is Dembe Mengul.

17. The Commission has received no evidence of any land grants made by Ethiopia as referred to in Eritrea's Memorandum.

18. The Commission finds it appropriate to observe that it would not be in accordance with the obligations of the Parties for either of them to take, or permit to be taken, any actions that prejudice, or might prejudice, the fulfilment of the Commission's Decision of 13 April 2002. By a letter addressed to both Parties on 21 June 2002, the Commission has already reminded them that it would not be in accordance with the obligations of either of them to take, or permit to be taken, any actions that prejudice, or might prejudice, the fulfilment of the Commission's Decision of 13 April 2002. It followed that both Parties should assist the Commission in the performance of its task and that neither Party should do anything to prevent or hinder the demarcation process or act in a manner contrary to the rights of the other. The Commission was also mindful of the duty of the Parties to do nothing that would aggravate the dispute. Neither Party should do anything to prevent or hinder the demarcation process or act in a manner contrary to the rights of the other, or otherwise aggravate the dispute.

ACCORDINGLY, THE COMMISSION,

in the exercise of its powers under Articles 20 and 27 of its Rules of Procedure,

DECIDES THAT

A. Eritrea's Request for the Commission to prescribe interim measures under Article 20 of the Rules of Procedure is rejected;

B. Any Ethiopian government-sponsored resettlement of Ethiopian nationals in Dembe Mengul after 13 April 2002 should not have taken place;

C. Ethiopia shall:

(i) forthwith arrange for the return to Ethiopian territory of those persons in Dembe Mengul who have gone there from Ethiopia pursuant to an Ethiopian resettlement program since 13 April 2002; and

(ii) report to the Commission on the implementation of sub-paragraph (i) above no later than 30 September 2002.

D. Each Party shall ensure that no further population resettlement takes place across the delimitation line established by the Decision of 13 April 2002.

The Hague, 17 July 2002

Signed by the Commission:

Professor Sir Elihu Lauterpacht, President

Prince Bola Adesumbo Ajibola

Professor W. Michael Reisman

Judge Stephen M. Schwebel

Sir Arthur Watts

Dr. Hiroshi Murakami, Secretary

Bette E. Shifman, Registrar

Enclosure 2

ERITREA - ETHIOPIA BOUNDARY COMMISSION

ORDER PURSUANT TO ARTICLE 27 (1) OF THE COMMISSION'S RULES OF PROCEDURE

WHEREAS,

The Commission adopted on 13 April 2002 its Decision Regarding Delimitation of the Border between the State of Eritrea and the Federal Democratic Republic of Ethiopia;

The border as so delimited by the Commission needs to be demarcated, to which end the Commission adopted on 8 July 2002 certain Demarcation Directions;

It is a matter of urgency that the demarcation be accomplished expeditiously;

THE COMMISSION NOW DECIDES, in the exercise of its powers under Article 27 (1) of its Rules of Procedure, to issue the following **ORDER**:

1. A Field Office of the Commission shall be established at Adigrat.

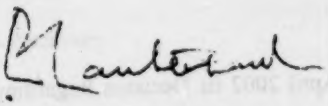
2. Work in Adigrat, for the construction and equipping of the premises for the use of the Field Office, shall commence as soon as possible so that that office shall begin its work no later than 31 July 2002.

3. The Chief Surveyor or the Assistant Chief Surveyor shall oversee the establishment of the Field Office.

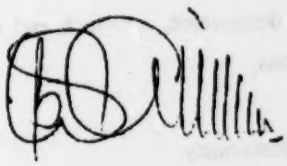
4. The Chief Surveyor shall ensure that the Field Office is staffed so as to be able to carry out its tasks as he deems appropriate, which shall, in the first instance, include resumption of the surveying of Ground Control Points and the emplacement and survey of secondary datum markers.

5. The Parties shall co-operate immediately with the Commission and its representatives in every aspect of the demarcation process and, to that end, shall provide all necessary assistance to the Commission and its representatives. The Parties shall refrain from hindering or impeding in any way the Commission or its representatives in the performance of their tasks in the fulfilment of the December 2000 Agreement, and in the implementation of the Decision of 13 April 2002 and the Demarcation Directions.

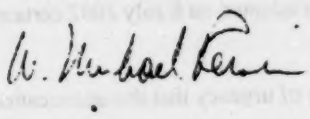
Signed at The Hague, 17 July 2002:



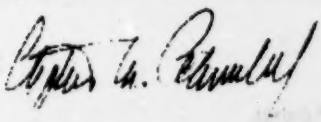
Sir Elihu Lauterpacht, CBE, QC, President



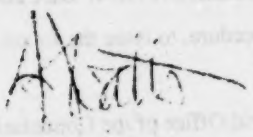
Prince Bola Ajibola, SAN, KBE, CFR



Prof. W. Michael Reisman



Judge Stephen Schwebel



Sir Arthur Watts, KCMG, QC

Dr. Hiroshi Murakami, Secretary

Bette E. Shifman, Registrar